# SINGAPORE REPORTS

## KEPPEL SHIPYARD (PTE.) LTD. v. MONVIA MOTORSHIP CORPORATION

[C.A. (Wee Chong Jin C.J., D'Cotta & Rajah JJ.)
January 31, 1980]

[Singapore — Civil Appeal No. 67 of 1978]

*Contract — Claim for breach of agreement to provide drydock space and execute repairs — Construction of telex documents — No express agreement — Principles applied by court.*

*Shipping — Claim against defendants for failure to provide facilities for screwshaft survey — Construction of telex documents — Principles applied by court.*

*Contract — Telex messages — Construction of — Principles applied by court.*

This appeal arose from a claim by the plaintiffs/respondents against the defendants/appellants for S$197,942.50 for damages allegedly suffered by them. The facts of the case evolved around three telexes exchanged between the plaintiffs' agents, Phocean Ship Agency Ltd. of London, and the defendants. The telex sent by Phocean to the defendants on October 3, 1973 read, *inter alia*, "Please advise us whether you have a drydock available for our MV Master Stelios 12900 tons dw for ordinary drydocking and screwshaft survey...." The defendants' reply of October 4, 1973 was, "MV Master Stelios, Re your enquiry 3/10 we can offer dockspace around 16/17 October. Please confirm early if acceptable." The telex sent by Phocean to the defendants on October 8, 1973 was "MV Master Stelios, Regarding our previous messages, please arrange stem drydock for 16/17 instant. We shall advise you vessel's eta later. Meantime please quote following items...."

The vessel "MV Master Stelios" arrived in Singapore on October 15, 1973 and on October 16 she proceeded to the defendants' shipyard and was in drydock. There was no screwshaft survey but the defendant executed repairs specifically requested by the master. The plaintiffs claimed that as a result of the exchanges of the said telexes, an agreement had been concluded between the parties by which the defendants were to provide drydock space in their shipyard for, and execute general repair work on, their vessel in October 1973. They claimed that it was a term of the agreement made expressly and/or by implication from the circumstances thereof that the defendants would provide the facilities for a screwshaft survey and by their failure were thus in breach.

**Held,** allowing the appeal: (1) in order to constitute a binding contract there must be a concluded bargain, and a concluded contract is one which settles everything between the parties and leaves nothing to be settled by agreement between the parties;

(2) in the case of commercial agreements, although the courts will not make a contract for the parties where none exists, they will seek to uphold bargains made between businessmen wherever possible, recognising that they often record the most important agreements in crude and summary fashion, and will seek to construe any documents fairly and broadly, without being too astute or subtle in finding defects;

(3) if satisfied that there was an ascertainable and determinate intention to contract, the courts will strive to give effect to that intention, looking at the substance and not at the form;

(4) in the present case the concluded contract was merely a contract binding the defendants to accept the plaintiffs' vessel in drydock for a period of days around October 16/17, 1973 for ordinary drydocking and screwshaft survey purposes. The defendants could not have known, nor was there any evidence that they in fact knew, on receipt of the third telex message that the plaintiffs were obliged for classification purposes to carry out a screwshaft survey for their vessel;

(5) the evidence was that the work entailed to enable a screwshaft survey to be carried out does not fall within the understood meaning of work normally done to a vessel during "the ordinary drydocking."

*Case referred to:-*

(1) *May & Butcher* v. *Rex* [1934] 2 K.B. 17, 21.

CIVIL APPEAL.

*P. Selvadurai* for the appellants.

*J. Grimberg* for the respondents.

*Cur. Adv. Vult.*

**Wee Chong Jin C.J.** (delivering the judgment of the Court): This appeal arises from a claim by the respondents (plaintiffs) against the appellants (defendants) for £33,934.94 equivalent to S$197,942.50, being the amount of damages allegedly suffered by them as set out in their amended statement of claim.

By judgment dated October 6, 1978 judgment was given for the plaintiffs against the defendants in the sum of S$197,942.50 with interest and costs to be taxed.

The story begins with three telexes exchanged between the plaintiffs' agents, Phocean Ship Agency Limited of London, and the defendants. On October 3, 1973 Phocean sent this telex to the defendants: —

"Please advise us whether you have a drydock available for our MV Master Stelios 12900 tons dw for ordinary drydocking and screwshaft survey your immediate reply will be appreciated thanks Phokais Tlx No. 886878."

On October 4, 1973 the defendants replied as follows: —

"MV Master Stelios

Re your enquiry 3/10 we can offer dockspace around 16/17 October. Please confirm early if acceptable."

On October 8, 1973 Phocean telexed the defendants as follows: —

"MV Master Stelios

Regarding our previous messages, please arrange stem drydock for 16/17 instant. We shall advise you vessel's eta later. Meantime please quote following items:

1. Drydock, shore unshore and undock vessel.
2. Provide the necessary tugboats and pilot to move vessel into and out of drydock.
3. Provide mooring crew ashore only. To moor vessel alongside a yard berth after or prior to drydocking.
4. Clean boottop belt and bottom by power hose and scraping as required and permit hull to dry.
5. Apply one full coat of owners (Hempels) boottop. One full coat of owners (Hempels) anti-corrosive and one coat of anti-fouling compositions.

   Touch up boottop belt and bottom areas as required and instructed by owner's superintendent with owner's primers (Hempels).
6. Repaint draught markings forward and aft and plimsoll markings.
7. Open out injection intakes, clean and coat grids and intakes with apexior.
8. Take rudder and tailshaft weardown and submit written record to this office.
9. Renew all eroded and/or missing shell anodes and fit owners new anodes (per anode) type Wilson Walton International W 117 and W 124.

   Open out shell valves as instructed by owner's superintendent, overhaul and close up.
10. Buff propeller by means of wire bushes.
11. Supply sanitary water during stay in drydock unless decent toilet spaces available ashore.
12. Supply fireline water supplies and disconnect on drydocking.
13. Supply fireguards during period of repairs, per man per day.
14. Supply shore current during stay in drydock and disconnect on undocking.

15. State cost of kw/hour for shore current including attendance.
16. Supply domestic refrigerator cooling water during stay in drydock and disconnect on undocking.
17. State cost per ton including attendance for refrigerator circulating water.
18. Supply telephone connection during vessel's stay at yard and disconnect upon departure of vessel.
19. Supply crane hire for owners stores or spares. Cost per hour attendance.
20. Grit or sandblast boottop belt inclusive per square metre.
21. Coat boottop belt two full priming coats per square metre, owners paints (Hempels).

All charges for numbered items to be inclusive of work, staging, etc.

No extra work to be executed unless sanctioned by owners superintendent engineer only."

The M.V. "Master Stelios" (hereinafter referred to as "the vessel"), the subject-matter of the telexes, arrived in Singapore and anchored at the West Anchorage at 2200 hours on October 15, 1973. On the following morning, October 16, she proceeded to the defendants' shipyard and was in drydock at 1420 hours. The ship owner's representative, Mr. Stylianos Eustathiou, to whom categoric reference was made in the third and last telex, arrived in Singapore on Wednesday, October 17 and boarded the vessel at 2200 hours. A great deal of evidence was led on both sides as to matters before these three telexes and as to what happened on arrival of the vessel in drydock on October 16, 1973 and before her leaving drydock on the morning of October 19. During the drydock period there was no screwshaft survey but the defendants executed repairs specifically requested by the master.

It was the plaintiffs' case by their statement of claim that as a result of the exchanges of these three messages an agreement had been concluded between the plaintiffs and the defendants on or about October 8, 1973 by which the defendants were to provide drydock space in their shipyard for, and execute general repair work on, their vessel in October 1973. The plaintiffs further alleged that it was a term of the said agreement made expressly and/or by implication from the circumstances thereof that the defendants would provide the facilities for a screwshaft survey. The plaintiffs' case was that the defendants had failed or refused to provide the said facilities for a screwshaft survey and were thus in breach of contract. The facilities for a screwshaft survey, as pleaded by the plaintiffs in their Further and Better Particulars consisted of "providing in dock, disconnecting the vessel's propeller and drawing in the shaft to a convenient place where it can be examined and to assist the surveyor to measure the clearance between the shaft and stern bush and to renew part or the whole of the bushing, if necessary, and rewooding the stern bush if necessary".

The defendants in their defence made no admission that these three telex messages resulted in a concluded agreement by which they would provide drydock space in their shipyard for and to execute general repairs. They also denied that it was a term of the said agreement made expressly or by implication from the circumstances thereof that they would provide the facilities, as particularised by the plaintiffs, for a screwshaft survey.

It is plain from the pleadings that the determination of this case turns on the true construction of these three telex documents. It is also plain that on the face of these documents there was no express term of the alleged concluded contract that the defendants would provide the facilities, as particularised, for a screwshaft survey. It seems to us that on the pleadings the plaintiffs' claim must necessarily fail unless on the true construction of these telex documents a contract had been concluded between the parties whereby the defendants agreed to provide drydock space in their shipyard for and to execute general repair work on the plaintiffs' said vessel and there was an implied term of that concluded contract that the defendants would provide the facilities set out in the plaintiffs' further and better particulars.

As regards whether or not there was a concluded contract to execute general repair work on the plaintiffs' vessel while in drydock in the defendants' shipyard, it is to be observed that there was no express agreement as to the repair work to be done and the price to be paid. It is also to be noted that in the third and last telex document the defendants were asked by the plaintiffs to quote charges for 21 specific items of work or materials, if supplied.

In order to constitute a binding contract "there must be a concluded bargain, and a concluded contract is one which settles everything between the parties and leaves nothing to be settled by agreement between the parties. Of course it may leave something which still has to be determined, but then that determination must be a determination which does not depend upon the agreement between the parties... As a matter of general law of contract all the essentials have to be settled. What are the essentials may vary according to the particular contract under determination". (*per* Viscount Dunedin in *May and Butcher* v. *Rex*[1]).

In the case of commercial agreements, although the courts will not make a contract for the parties where none exists, they will seek to uphold bargains made between businessmen wherever possible, recognising that they often record the most important agreements in crude and summary fashion, and will seek to construe any documents fairly and broadly, without being too astute or subtle in finding defects. If satisfied that there was an ascertainable and determinate intention to contract, the courts will strive to give effect to that intention, looking at the substance and not at the form (see *Halsbury's* Laws of England 4th Ed. Vol. 9 para. 269 and cases cited therein.)

Applying these principles can it be said that on the true construction of the three telex documents, looking at the substance and not at the form, there was an ascertainable and determinate intention on the part of the parties binding the plaintiffs, on the one hand, to take their vessel to the defendants' shipyard to drydock and to engage the services of the defendants to execute general repair work and to pay the defendants a reasonable price for any repair work done and reasonable prices for materials supplied in the course of such repair work and, on the other hand, binding the defendants to have drydock space available for general repair work and to execute any

general repair work that the plaintiffs may require them to carry out to the vessel and to supply the necessary materials at reasonable prices.

The expression "general repair work" is used by the plaintiffs in their statement of claim as being the nature of the work which they allege the defendants had agreed to execute to the vessel. Those words are not to be found in the plaintiffs' first telex message dated October 3. There was no evidence either of trade custom or normal practice of the trade that offering drydock space for a vessel in response to an inquiry for drydock space for a vessel for "ordinary drydocking and screwshaft survey" is understood to mean an offer to execute whatever general repair work that the owners of the vessel may require to be done. Nor was there any evidence that the defendants so understood it. The expert witnesses who gave evidence at the trial were not questioned at all as to what a shipyard would have understood when asked to provide "drydock space for ordinary drydocking and screwshaft survey". Indeed the evidence of the plaintiffs' expert witness was that by the third telex message the plaintiffs were not ordering the work of ordinary drydocking and screwshaft survey to be carried out and that the first telex message was merely an inquiry by the plaintiffs whether a drydock was available and was not an order to the defendants to carry out ordinary drydocking and screwshaft survey.

It follows, in our judgment, that on the true construction of the three telex documents, although there must have been an intention by both parties, continuing up to the arrival of the vessel at the shipyard, to make a contract, the parties were not *ad idem* on the terms which they, on the arrival of the vessel, regarded as being required in order that a contract should come into existence. In our opinion while it is clear that the parties intended to make a contract for such work as would be required during ordinary drydocking and to enable a screwshaft survey to be carried out, the exact terms were left for future agreement.

Furthermore, in our opinion there was no evidence from which the court could, assuming there was a concluded contract by the defendants to provide drydock space for and to execute "general repair work" on the plaintiffs' vessel, import a term by implication that the defendants would "provide in dock, disconnect the vessel's propeller and draw in the shaft to a convenient place where it can be examined and to assist the surveyor to measure the distance between the shaft and stern bush and to renew part or the whole of the bushing, if necessary, and rewood the stern bush if necessary". To imply such a term on the evidence before us would be to make an entirely different contract for the parties. It has often been said terms are not to be implied merely because they are desirable, or merely because the parties, if they had considered the question, would probably as reasonable men have agreed such terms. A term can only be implied where it is necessary in order to give "business efficacy" to the contract. In the present case the concluded contract was merely a contract binding the defendants to accept the plaintiffs' vessel in drydock for a period of days around October 16/17, 1973 for ordinary drydocking and screwshaft survey purposes. The defendants could not have known, nor was there any evidence that they in fact knew, on receipt of the third telex message that the plaintiffs were obliged for classification purposes to carry out a screwshaft survey for their vessel. Even though it may be necessary to give business efficacy to imply a term that the defendants agreed to execute such repairs as are ordinarily required to a vessel when it drydocks we are of the opinion that there was no such necessity to imply a term as particularised in the plaintiffs' further and better particulars. Indeed the evidence was that the work entailed to enable a screwshaft survey to be carried out does not fall within the understood meaning of work normally done to a vessel during "ordinary drydocking".

For these reasons the appeal is allowed with costs here and in the court below.

*Appeal allowed.*

Solicitors: *Rodyk & Davidson; Drew & Napier.*

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## CHIA BENG CHYE v. PUBLIC PROSECUTOR

**[C.C.A. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) March 5, 1980]**

**[Singapore — Criminal Appeal No. 13 of 1978]**

*Misuse of Drugs — Trafficking in 111.96 gms of diamorphine — Arrest by customs officer — Whether customs officer had power to record statement from accused — Misuse of Drugs Act, 1973, ss. 3(a), 21 to 23 — Criminal Procedure Code (Cap. 113) s. 121(6) & (8).*

*Customs — Trafficking in diamorphine — Arrest by customs officer — Whether customs officer had power to record statement from accused — Misuse of Drugs Act, 1973, ss. 3(a), 21 to 23 — Criminal Procedure Code (Cap. 113), s. 121(6) & (8).*

*Criminal Law and Procedure — Customs officer — Whether has power to record statement from accused — Criminal Procedure Code (Cap. 113), s. 121(6) & (8).*

The appellant in this case was observed by five customs officer led by Assistant Superintendent of Customs Cheong handing a white plastic bag to one Koh. The latter was finally arrested and the bag which contained 26 packets of brownish substance were analysed by the Senior Scientific Officer of the Department of Scientific Services and were found to contain 111.96 gms of diamorphine.

The trial judges held that as it was the appellant who gave the plastic bag containing the diamorphine to Koh, and, having regard to the definition of "traffic" in section 2 of the Act, a *prima facie* case had been made out against him under section 3(a) of the Misuse of Drugs Act 1973. The trial judges accepted the voluntary statement the appellant gave to Assistant Superintendent of Customs Cheong on the night of his arrest. The statement was taken in writing by Assistant Superintendent of Customs Cheong under section 121(6) of the Criminal Procedure Code. The appellant contended that as an officer of customs is not a police officer, Assistant Superintendent Customs Cheong had no power to record the statement from the appellant under the provisions of the Criminal Procedure Code and that the statement should not have been admitted in evidence. It was also submitted by the appellant that a Scientific Officer is not a "Government Chemist", a certificate given by the former is not a valid certificate under section 14 of the Misuse of Drugs Act 1973 that *prima facie* the 26 packets contained 111.96 gms of diamorphine.

**Held,** dismissing the appeal: (1) an officer of customs has a duty to investigate into the facts leading to the arrest and seizure. If, after investigation, the facts so warrant he must charge the person in court for an offence under the Misuse of